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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 391

SAMUEL LEISER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 75–79; Pet. 43–47) is reported at 234 F. 2d 648. The opinion of the District Court (R. 68–70) is reported at 137 F. Supp. 527.

JURISDICTION

The judgment of the Court of Appeals was entered on June 13, 1956 (R. 80). The petition for a writ of certiorari was filed on September 6, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the unplanned landing in the United States of a plane scheduled to land in Newfound-

land exempted a passenger from the application of the United States customs law requiring passengers to declare the contents of their baggage.

2. Whether a libel for forfeiture of undeclared diamonds subjected the petitioner to double jeopardy where he had previously been acquitted under an indictment charging knowing and fraudulent smuggling of the diamonds into the country.

3. Whether the government acquired possession of the diamonds by unlawful search and seizure.

STATUTES AND REGULATIONS INVOLVED

The Act of June 17, 1930, c. 497, Sections 496, 497, 498, 624, 46 Stat. 727, 728, 759 (19 U. S. C. 1496, 1497, 1498, 1624) provides:

> SECTION 496. The collector may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made.
>
> SECTION 497. Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article.
>
> SECTION 498. The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—
>
> * * * * *

(6) Articles carried on the person or contained in the baggage of a person arriving in the United States;

* * * * *

SECTION 624. In addition to the specific powers conferred by this Act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this Act.

* * * * *

19 C. F. R., 1956 Supp., 6.3 (g) provides in pertinent part:

* * * * *

Should any aircraft coming into the United States from any place outside thereof, or into any area from any other area, make an emergency or forced landing in the United States, the aircraft commander shall not allow any merchandise, including baggage, to be removed from the landing place without permission of the customs officer, nor allow any passengers or persons employed thereon to depart from the landing place without permission of the customs officer, unless such removal or departure is necessary for purposes of safety, communications with customs authorities, or the preservation of life, health or property. As soon as practicable, the aircraft commander, or a member of the crew in charge, or the owner of the aircraft, shall communicate with the customs officer at the intended place of first landing or at the nearest international airport or other customs port of entry in that area and make a full report of the circumstances of the flight and of the emergency or forced landing. * * *

19 C. F. R., 1956 Supp., 10.19 (a) provides:

> (a) *Declaration required.* All articles brought into the United States by any individual shall be declared to a customs officer. The declaration may be made to a customs officer at the port of first arrival in the United States or on a train or ferry en route to the United States on which such an officer is assigned for that purpose. The declaration may be submitted to a United States customs officer stationed in a foreign country for that purpose if one is available and all the articles presented to him for inspection and clearance are within allowable exemptions.

STATEMENT

Petitioner seeks review of a judgment of the Court of Appeals for the First Circuit, affirming a judgment of the United States District Court for Massachusetts forfeiting diamonds to the United States for failure to make declaration thereof when he arrived in the United States by airplane.

The pertinent facts are as follows:

In June 1954, petitioner, whose home is in New York (R. 24, 43), purchased in Germany airplane transportation to Gander, Newfoundland, and ultimately to Bermuda. He was not scheduled to stop in the United States (R. 23). The plane, however, overflew Gander because of adverse weather conditions and landed in Boston (R. 23). Before it landed, the purser distributed United States customs forms to the Gander passengers and told them to sign them (R. 25, 43). Under the headings on the forms entitled "Description of Articles" (Articles Obtained for Use

of and Accompanying Passengers) the purser wrote "Gander, P S G Overflew In Transit" (R. 25, 43). Petitioner corrected the spelling of his name on the form, filled in the citizenship blank as "U. S. A.," and signed the declaration at the bottom (R. 25–26, 44). Other parts of the form to the effect that the baggage consisted of personal effects and one orange were completed by a Boston Customs Inspector in petitioner's presence on information furnished by petitioner (R. 26, 44). No diamonds were declared.

Petitioner, before speaking to any of the United States customs officers, stated to employees of T. W. A. that he desired to proceed to either Canada or Newfoundland (R. 27, 45). In his conversations with customs agents he stated that he had not intended to come to the United States, that he intended to proceed by the first available transportation either to Canada in general or Newfoundland, and that he and a fellow passenger, one Hanhart, had an appointment in Newfoundland that evening (R. 28, 46). Customs agents refused to permit petitioner to proceed on transportation which the airline had arranged that morning (R. 30). Petitioner was requested to submit to an internal medical examination by a doctor of the United States Public Health Service (R. 31, 47). Petitioner claims that he refused (R. 31) but the government states that he requested that such examination be made at a hospital (R. 47). On the way to the hospital, the diamonds were discovered under the seat of the customs automobile in which they were riding (R. 48) and were then seized (R. 32). Petitioner claims that after such seizure he was

subjected to an involuntary medical examination at the hospital and was kept there against his will for several hours by the customs officers (R. 32, 48).

Before the libel for forfeiture was filed, petitioner had been acquitted on an indictment charging that he smuggled and fraudulently imported the merchandise into the United States (R. 37).

ARGUMENT

1. Petitioner argues that since his arrival in the United States was unintentional, the goods which he carried on his person should be deemed exempt from the customs laws of the United States, with the result that, despite the false statement in his declaration, the diamonds should not be deemed subject to forfeiture.

Since petitioner does not deny the power of the United Sates to make its laws applicable within its territorial jurisdiction, his entire argument is one of statutory construction. The simple answer to his elaborate contentions is, therefore, the one given by the court below, that there is nothing in either the statute or the regulations which exempts any person physically arriving in the United States from the duty to make a declaration. Nor is there any reason of policy why such persons should be exempt from that duty. So long as the person is actually here, the United States has the right to inquire as to what he has with him, if for no other reason than to make certain that he is not carrying something which might be injurious to public health. There is no issue in this case as to the imposition of a duty; the issue is merely the right to obtain information as to articles

which are physically present in the United States on a person actually here. On this, both the statute and the regulations are clear.

The statute provides "The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—* * * (6) Articles carried on the person or contained in the baggage of a person arriving in the United States." Act of June 17, 1930, c. 497, Section 498, 19 U. S. C. 1498. Pursuant to this statute and to Section 624 (19 U. S. C. 1624), 19 C. F. R. 10.19 (*supra*, p. 4) provides that "*All articles* brought into the United States *by any individual* shall be declared to a customs officer". The absence of exception cannot be attributed to oversight. The possibility that passenger aircraft and their passengers might make wholly unexpected landings in the United States is recognized by regulation 19 C. F. R. 6.3 (g) (*supra*, p. 3) which provides for reports and clearances in that situation. The failure to provide any exemption in regulation 10.19 from the duty of "any individual" to declare "all articles" thus represents a deliberate policy of exercising the admitted power of the United States to obtain information from all persons coming within its jurisdiction.

The arguments made by petitioner to the effect that articles brought involuntarily should not be deemed imported and that the customs laws should be held to apply only to articles imported assume that the United States would have no valid reason for obtaining information as to articles accompanying a person who is actually here. But the mere fact of presence within the United States immediately makes the matter of

concern to the United States, whether to prevent evasion of the customs laws, or for reasons of public health. The right to obtain the information, therefore, cannot be limited by the ultimate destination or dutiability of the articles.

The cases cited by petitioner do not touch the specific question of the requirement of declaration of the contents of their baggage by persons arriving involuntarily, nor do they establish a general rule exempting all involuntary arrivals of persons or property from the operation of the customs statutes. Their holdings are that customs duties will not be taxed on property coming into the United States jurisdiction by *vis major* and that cargo otherwise forfeitable, *e. g.,* contraband, will be exempted from such forfeiture where the vessel arrived involuntarily. Clearly this is no blanket rule of exemption covering all customs laws in cases of unexpected arrivals of persons or property, nor does it touch the duty of declaring or making known to port authorities the character of the arriving property. No question of declaration or concealment of the nature of the property was involved in the cases petitioner cites—they concern only the imposition of duties or the right to seize. The principle of those cases is embodied in our statutory customs laws. The Act of June 17, 1930, ch. 497, Section 441 (4), as amended (19 U. S. C. 1441 (4)), exempts from the requirement of entry at the custom house "vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without hav-

ing landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores." As the court below points out, the limitations imposed by this statute itself show that not all involuntary arrivals are automatically exempt from all customs requirements.

As noted, there is no issue here as to the right to impose a duty. The only question is the right to obtain information. Neither the language of the statute and regulations nor the policy behind them preclude their application to this situation.

2. Petitioner's contention that the libel subjected him to double jeopardy is without merit. As the Court of Appeals noted, the issues in the two cases are not the same; the criminal indictment charged petitioner with fraudulently and knowingly smuggling the diamonds into the United States in violation of Section 497 of the 1930 Act (19 U. S. C. 1497), and of 18 U. S. C. 545. The libel is unconcerned with the intent of the traveler and concerns itself only with whether the goods were brought in without declaration. *United States* v. *20 Strings Seed Pearls,* 34 F. 2d 124 (S. D. N. Y.) Thus the holding in *Coffey v. United States,* 116 U. S. 436, that the facts ascertained in a criminal case as between the United States and a claimant could not be again litigated between them in a civil suit which was punitive in character, is inapposite, since the facts for determination in the two smuggling cases and the instant libel are different. Cf. *United States ex rel. Marcus* v. *Hess,* 317 U. S. 537, 550, 551; *Helvering* v. *Mitchell,* 303 U. S. 391, 400; *Various Items of Personal Property* v.

United States, 282 U. S. 577, 581; *Stockwell* v. *United States,* 13 Wall. 531, 547, 555; *United States* v. *20 Strings Seed Pearls, supra.* Petitioner's argument that intent is part of the forfeiture proceeding is merely a rephrasing of his argument, discussed above, that no declaration should have been required.

3. Similarly, the contention that the diamonds were illegally secured depends on petitioner's position that he was not subject to the customs laws. If he was, it was reasonable to request that he permit a physical examination. The diamonds were discovered on the way to the hospital to which petitioner was being taken at his request. Nothing in the record suggests that the officers acted outside the scope of the broad powers of search conferred by the customs statutes and recognized by the courts. 19 U. S. C. 482, 1581, 1582; *Boyd* v. *United States,* 116 U. S. 616, 623.

CONCLUSION

For the reasons given it is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956